The Settlement

OF THE

Street Railway Question

IN

Indianapolis.

ISSUED BY
Authority of the Board of Public Works,
Indianapolis, Ind., May, 1899.

THE citizens and taxpayers of Indianapolis have a right to know all about the contract recently made with the Indianapolis Street Railway Company, and to be informed as to the motives and purposes of their officers who were in any degree responsible for its execution. Much has been said on the subject by men who knew nothing of the street railway situation, and who apparently did not care to learn on the subject. Because of persistent misrepresentation of facts, and also because of the right of the people to be fully advised on the subject, it was concluded to lay before the public all the facts surrounding the transaction. The following facts are therefore presented:

THE SITUATION.

The Citizens' Street Railroad Company obtained a franchise in 1864 for thirty years. In 1880 the Common Council extended the term seven years longer, or until January 18, 1901. In 1893 the City Attorney decided that the seven years extension ordinance was invalid, and held that the franchise of the Citizens' Company would expire January 18, 1894. On the strength of this decision a contract was made with the City Railway Company in 1893, by which it was granted a thirty-year franchise, with straight five-cent fares or six tickets for twenty-five cents. When the City Company undertook to proceed under this contract, it was met by the Citizens' Company with an injunction suit. The Citizens' Company not only claimed in this suit that its franchise extended until 1901, the end of the thirty-seven years, but for the first time made the startling claim that it was in perpetuity, subject only to the reserved power of the Legislature to terminate it. Judge Woods, of the United States Circuit Court, on the hearing of this case, sustained the claim of the Citizens' Company, and enjoined the City Company for all time to come from interfering in any way with the Citizens' Company's right of possession.

From this decision an appeal was taken by the City Company to the Supreme Court of the United States, which decided that as the Citizens' Company's franchise would certainly not expire until January 18, 1901, it was not necessary to decide the question of perpetuity.

The Legislature of 1897, acting on the theory that Judge Woods' decision might be right, passed what was known as the " New Act," which provided in effect that the Citizens' Company's franchise as

to all streets covered by the contract of 1864 should terminate on the 18th day of January, 1901. The same Legislature later in the session passed the three-cent fare act.

The Central Trust Company of New York, trustee for the mortgage bondholders of the Citizens' Company, immediately brought an injunction suit to prevent the enforcement of the three-cent fare act. This case was heard by Judge Showalter, who was called here by Judge Woods for that purpose. He decided that the statute was invalid, because in conflict with that provision of the State Constitution which forbids special legislation—the statute in dispute having a provision that it should only apply to "cities having a population of more than one hundred thousand according to the census of 1890." As the statute known as the "New Act" contained precisely the same provision, in the same language, the effect of Judge Showalter's decision was also to invalidate that act.

The Supreme Court of Indiana, in the case of Navin vs. The City, put a different construction on the State Constitution, and decided the three-cent fare act to be valid and constitutional.

A motion was then made before Judge Showalter, asking him to dissolve the injunction, on the ground that the Federal Courts were bound to follow the decisions of the State Supreme Court on matters relating to the State Constitution. Judge Showalter, however, declined to be bound by the decision of the State Supreme Court, and overruled the motion to dissolve. From this decision of Showalter an appeal was taken by the city to the Circuit Court of Appeals at Chicago, and that court, composed of Judge Woods of Indiana and Judges Jenkins and Bunn of Wisconsin, decided that it had no jurisdiction to review Judge Showalter's decision.

In order to settle all questions connected with the street railway situation, the City Attorney then filed a complaint, in the case known as the Hamilton county case, by which he brought the two companies—the Citizens' Company and the City Railway Company—into court, alleging that the Citizens' Company's franchise would expire January 18, 1901, but that it was wrongfully claiming rights beyond that period, also alleging that the City Company claimed to have a franchise, extending for a period of thirty years beyond January 18, 1901, but that any such contract was void, and asking that the title of the city to its streets be quieted as against both companies, from and after January 18, 1901, and that both said companies be enjoined from asserting any claim to any such streets after that date.

The City Company filed an answer, setting up its contract of 1893, and claiming that under that contract it had a franchise for

thirty years commencing on January 18, 1901, and the right to charge straight five-cent fares, or sell six tickets for twenty-five cents during that period.

The Citizens' Company filed an answer, alleging that the "New Act" of 1897 was unconstitutional and void, and again setting up their claim of perpetual right.

Judge Neal decided this case in favor of the city, as against both companies, holding that the contract between the City Company and the city was void as against public policy, that the "New Act" of 1897 was constitutional, and that by its provisions the franchise of the Citizens' Company to use the streets named in the contract of January 18, 1864, would expire on the 18th day of January, 1901.

From this decision both companies appealed to the Supreme Court of the State, and in December, 1898, that court (by a majority opinion) reversed Judge Neal's decision as to the City Railway Company, holding that its contract with the city was valid and binding, and should be carried out.

It was conceded by all that the three-cent fare act of 1897 did not affect the contract of the City Company, so that the effect of this decision was to bind the people of the city to a five-cent fare, with six tickets for twenty-five cents, for at least thirty years from January 18, 1901. The court also held that the Citizens' Company's franchise would expire on the date last named.

After the new judges of the Supreme Court took their seats on January 1, 1899, a rehearing was granted in the Hamilton county case, and that case is still pending in the Supreme Court, undisposed of.

THE STATUTE OF 1899.

The litigation was in this condition when the Legislature of 1899 assembled. It was believed that it would be to the best interests of all concerned if the New act and the three-cent fare act were repealed and a new law enacted authorizing the city to make a new contract. It had been demonstrated that a three-cent fare was not only impracticable, but impossible. It was shown beyond question that for the year ending April 30, 1897, the expenses of operating the Citizens' Street Railroad Company, exclusive of interest charges, were $634,629.81; that the interest charge on its mortgage indebtedness ($4,000,000) was $210,000, making a total of $844,629.81; that the entire number of fares collected during that period was 19,239,795, which, at three cents each, would amount to only $577,-103.65, or $267,526.16 less than the cost of operation and the amount of fixed charges. These figures were sworn to, and had not been and could not be successfully disputed.

The Citizens' Company had and held fifty-year franchises on the streets of West Indianapolis, Haughville, Brightwood, Mt. Jackson, and perpetual franchises on East and West Washington streets, on North Illinois street, Central avenue, and other streets, which franchises had been granted by the various Town Boards and County Commissioners, and none of which had ever been in litigation.

It was known that if the Supreme Court of Indiana reversed its decision in the Hamilton county case, it would not do so before May or June, 1899; that the street railway companies would have one year from that date, or until May or June, 1900, in which to appeal to the Supreme Court of the United States; that a decision in that court would not probably be reached before June, 1902; that if the decision of the Indiana Supreme Court was reversed, it would mean a renewal of the whole fight, and the same long and wearisome road would have to be traveled again, and that, on the other hand, if the Indiana decision was affirmed, then new and hitherto unexplored fields of litigation would be opened up: first, as to the franchise rights of the Citizens' Company in all the suburbs, and second, as to rights of the mortgage bondholders, whose mortgages on all the tangible property of the company do not mature for thirty-four years from this date; that such new litigation, with a year for appeal in each case, could not be reasonably concluded before 1907 or 1908.

With these facts before it, the Legislature enacted the existing statute, which gave the city the right to contract with any company which could and would surrender all outstanding franchises of every kind, thus ending all litigation, which would bind itself to give good modern service, sell six tickets for twenty-five cents and twenty-five tickets for one dollar, pave between the tracks, admit suburban and interurban lines, and perform many other things for the interest of the public, which contract and franchise might extend for a period of thirty-four years, or during the life of the mortgage, which, as shown, would be a continuing lien on all the tangible property of the company during that time.

In view of the existing conditions, a contract of this kind seemed so desirable that, out of one hundred and fifty members of the Legislature, less than a dozen voted against the bill authorizing it, and it thus became a law.

THE CONTRACT WITH THE CITY.

The city authorities, being thus clothed with power to act within the limitations prescribed by the Legislature, were brought face to

face with the proposition, not only as to what was best to do, but what they could do. Every reasonable man will see at a glance the difficulties with which they were surrounded. If there had been no litigation, no disputed franchises, no mortgage liens on the plant, their way would have been beset by but few difficulties, and they would have been in position to have demanded, and enforced compliance with, almost every desired condition.

But confronting them, first, was an adverse decision of the Supreme Court of the State, and a claim of perpetual right by the occupying company, which it would take years of litigation to dispose of. How the Supreme Court of the United States would decide these questions no one could be expected to know.

Then, standing like a stone wall in the way of their demands, was a mortgage of four million dollars, three millions of which ran for thirty-four years, which mortgage, the validity of which was unquestioned, was a lien on every rail and tie and pole and wire, and on all the real estate of the occupying company. No matter when the franchise expired, this mortgage on the tangible property was there for thirty-four years. No matter how unjust the mortgage, it secured bonds in the hands of innocent holders and was fastened on all this tangible property, just as any other mortgage grips a farm or a house. Whatever company took the contract and operated this street railroad system took it subject to that thirty-four-year mortgage, and would have to assume its payment and the payment of $210,000 interest every year out of its earnings. It was a condition, and not a theory, with which the city had to deal. It was likewise a mortgage.

Every business man acquainted with these facts, and not entirely blinded by prejudice, saw at a glance how utterly impossible was the proposition that the city should insist on three-cent fares. If the city had been unencumbered by litigation, and its streets free from a four-million-dollar mortgage—in other words, if it could have had a "fresh, clean start"—it might have successfully demanded fares at a rate in the neighborhood of three cents, but, hedged in by litigation, and confronted with the complications named, it was an impossible thing, and its officers could only do the next best thing; and so what is practically a four-cent fare, with universal transfers to every part of the city (with the power reserved to compel the company to extend its lines to every part of the city), was agreed to —the cheapest rates of fare, accompanied by universal transfer, enjoyed by the people of any city in the United States

THE AMOUNT TO BE PAID.

The proposition made by the company to the Legislature, and afterwards to the city, was to pay $750,000 into the city treasury. Not in a lump sum, as assumed by a few. No such proposition was ever heard of. The first proposition made by the company was to pay the last half of the $750,000 during the last seven years of the franchise. Its best proposition ever made was to pay $25,000 per year for thirty years. Of course, the question as to what use should be made of the money was a serious one. It was argued on the one hand that, if it should be paid in large sums into the general fund of the city treasury, it would be a standing invitation for increased expenditure, and that when expended, the people might have little to show for it. It was urged, on the other hand, that as a non-partisan Department of Public Parks had just been created, and the work of improving a park system just commenced, it would be for the best interests of the people to apply all the money received from the street railroad company to the improvevment and beautification of these grounds, which could be enjoyed by all.

Then came the question of amount. The Board of Public Works was determined from the first not to accept less than a million dollars, and to get as much more as it could. As the franchise covered a long period, it was thought best that the payments should be made yearly. One of its first demands was $40,000 per annum during the entire period, and as a matter of compromise, at the conclusion of negotiations, it made the proposition embodied in the contract, namely, $1,160,000, payable $30,000 every year for twenty-seven years, and the remainder in seven installments of $50,000 each. So that, by this contract, instead of receiving $750,000, payable in annual installments of $25,000 each, the city will receive $1,160,000, payable in annual installments of $30,000 and $50,000; and no city official other than the Park Commissioners can ever touch or direct the expenditure of a dollar of it.

THE LENGTH OF THE FRANCHISE.

Except as to rates of fare, the strongest effort was made by the Board to limit the length of the franchise to be granted to a period less than that authorized by the Legislature, and insisted on by the company. The Board urged and for a long time stood upon the proposition that twenty-five years was the extreme limit of any franchise they would grant, but the company peremptorily, at every stage, refused to entertain any such proposition. They argued that as they must assume the payment of the mortgage bonds of the

Citizens' Company, which did not mature for thirty-four years, and as they were bound to pay the interest on those bonds every year during that period, that they could not assume that burden without being permitted to operate the road that long; that the interest on the $3,000,000 thirty-four-year bonds at 5 per cent. was $150,000 per annum; that if their franchise expired in twenty-five years they would have to go on paying this $150,000 interest charge for nine years after their right to operate the railroad had ceased, and they would thus have to pay nine times $150,000 in interest, which would amount to $1,350,000 after the expiration of their franchise.

Again, the Board considered that seven, eight or nine years spent in litigation, added to a twenty-five-year franchise, would make up nearly, if not quite, the term asked.

Again, if the last decision of the Supreme Court of the State should be sustained as to the City Railway Company, that company's franchise would be operative for a period of thirty years from January 18, 1901, or nearly thirty-two years from this date.

In this connection, the Board had and kept in mind the wretchedly inferior service now being furnished to the people—a service constantly growing worse as the litigation proceeded and the complications multiplied. They reasoned that thirty-four years' good and modern service, commencing in 1899, would be better for the people than twenty-five years' good service commencing in 1907, 1908 or 1909. These were some of the chief considerations for consenting (under protest) to a term of thirty-four years.

CITY CONTROL OF THE STREET RAILROAD SYSTEM.

As municipal ownership of the street railway in Indianapolis is impossible now and for many years, because of the constitutional limitation and restriction as to the amount of municipal indebtedness in Indiana, the Board believed that it was of almost equal importance to the people that the franchise should be so framed as that during the whole thirty-four years of the franchise the operation of the street railroad should be under municipal control.

Under the terms of most, if not all, existing franchises of this character, street railway companies are bound to furnish adequate and first-class service to the public, but when the question arises, "What is adequate and first-class service?" the question is left to the street railroad companies themselves for solution. This defect the Board was determined to remedy, and the contract entered into contains the most stringent and absolute provisions, giving to the city at all times unlimited power to control the extension of lines, the number of cars to be run on each line, the intervals between cars

on all lines at all hours of day or night, the system of transfers, the character of rails and cars, and everything else affecting the safety, comfort and convenience of the public. So that, under this contract, with full power over these matters lodged in the public servants, if the public is not well served it will be the public's fault.

WHY THE INDIANAPOLIS STREET RAILWAY COMPANY WAS PREFERRED.

A full history of the street railway litigation, covering a period of six years, and promising to last from seven to ten years longer, has been given above, and the deterioration of the service commented on. It was greatly desired by the Board, and, as they believed, by the people generally, that this litigation should cease and the work of improving the service begin.

The Indianapolis Street Railway Company proposed to bind itself that it would within sixty days procure all the franchises claimed or held by both the City Company and the Citizens' Company, to be absolutely surrendered to the city—not only the franchise of the Citizens' Company which had been in litigation, but the franchises granted by the various Town Boards, spoken of, and by the County Commissioners, under which the Citizens' Company could completely and effectually block the passageways on East and West Washington streets, on North Illinois street, Central avenue, Northwestern avenue, and other important streets in the city proper, and all the streets in the various suburbs, and the highways leading from the city proper to these suburbs.

This proposition meant that at once the city should be freed from the iron grasp of this corporation, which has so long and so cruelly wronged our people. It meant an absolute end to all litigation. It meant a transfer of control from the street railway company to the people. It meant an immediate improvement of the service. It was the only company that could do this, or even promise so to do. It was the only company that could even promise to obtain possession of the tangible property of the occupying company within any definite period of time.

It is true that Mr. C. F. Smith came before the Board and proposed that he would take a franchise for a shorter time, and give a bond of $100,000 that he would operate a street railway on three-cent fares. When asked when he would obtain possession of the present plant, his answer in effect was, "I don't know." When inquiry was made how he expected to gain control of the property, he replied, "By litigation." "When will you give to the people three-cent fares?" "I don't know." In other words, he proposed to en-

gage in lawsuits with the Citizens' Company and City Company, and after finishing those lawsuits successfully (if he did), would carry out his proposed contract with the city. He proposed to surrender nothing and do nothing to relieve the city and its people from existing ills.

While Mr. Smith was amusing himself for years litigating, first with the City Company through the Supreme Court of the United States, then with the Citizens' Company through the same court, in the pending case, then with the Citizens' Company through all the courts as to its franchises granted by Town Boards and the Commissioners, then with the mortgage bondholders of the Citizens' Company over their thirty-four-year mortgage, the people of Indianapolis would continue to pay five-cent fares, hang on to straps, and suffer from the present miserable and constantly deteriorating service.

On the one side there was offered a four-cent fare, more than a million dollars in money, the expenditure of at least a million dollars more in the immediate betterment of the service, the absolute surrender at once of all the franchises and claims of all companies, and the immediate ending of all litigation.

On the other hand there was offered the Smith proposition, that he would embark on the sea of litigation with the two companies, and would, if he could, at the end of his various proposed voyages, run a street railroad on the tracks and over the lines of the occupying company when he could get hold of them.

The first proposition meant the saving to the people in reduction of fares from this date of about $150,000 per annum.

The second proposition meant a loss of that amount to the people each year that Mr. Smith's lawsuits were progressing.

On one side all was certainty. On the other, all speculation and uncertainty.

What business man, acting for himself, would have hesitated as between these two propositions? The Board did not hesitate. It rejected the proposition of the man who could not even promise relief to the people, and accepted that of the company which was in position to furnish to the public speedy relief and adequate and first-class service.

The following are some of the advantages to be realized <u>now</u> by the people of Indianapolis over the old system:

First.—Four-cent fares, instead of five-cent fares, by which a saving of $150,000 per annum to the people is effected. This saving in seven years of proposed litigation will amount to more than one million dollars.

Second.—One million and one hundred and sixty thousand dollars in cash to be paid to a non-partisan Park Board, and expended yearly in beautifying parks and making pleasant places of resort for the men, women and children of the city.

Third.—Instead of poor service, as at present, one million dollars to be expended in the immediate betterment of the service. First-class, new and modern cars, first-class, level and smooth tracks, and all modern conveniences.

Fourth.—Instead of the adjacent property owners paying for the improvement of that part of the street lying between the tracks, the street railroad company in the future is to pay for all such improvement, and for the improvement of the space eighteen inches on either side of such tracks.

Fifth.—The street railroad company is at once to pave all that part of improved streets between its tracks which has not heretofore been improved.

Sixth.—Instead of the street railroad company having power, as heretofore, to exercise its own will as to the number of cars run and the time-schedules on which they are run, that power is hereafter to be exclusively with the municipal authorities, who have absolute and unconditional control of all such matters.

Seventh.—In order that future complications may not grow out of mortgages or other liens on the street railroad property, this contract provides that if any mortgage or other lien which runs over or beyond the period of the franchise is attempted to be put on the property, the franchise shall at once be forfeited.

Eighth.—Under the old contract the street railway company exercised its judgment and discretion about extending its lines to new additions and suburbs. Under this contract, such extensions must be made whenever directed by the municipal authorities.

Ninth.—Under the old contract the Citizens' Company always claimed the right to enter upon any street it saw fit, and lay its tracks, regardless of the wishes of the city or the people on that street. Under this contract the present company cannot lay a foot of track on any street without the express consent of the municipal authorities.

Tenth.—Under the old contract a passenger with a transfer ticket was compelled to leave his car at the first point of intersection with the line to which he desired to be transferred, and was compelled to stand at that particular spot (no matter what the condition of the weather) and there get on the transfer line. Under this contract the passenger has the option of making the transfer at the first point of intersection, or (if both lines run over the same

track for a distance) he may continue on the first car to the point of divergence, and there make the transfer. Instead of being compelled to stand in one place and wait for his car, he may make the transfer at any point within one square either way from the point where he first alights. In addition to this, the whole matter of transfers is left in the control of the city.

Eleventh.—Instead of passengers shouting or signaling to the conductor to stop the car when they desire to alight, as now, this contract provides that each car shall be provided with alarm bells, so that by pressing a button, which must be convenient to every seat, passengers may thus notify the conductor, without difficulty, as to their desire to alight.

In short, this contract embodies all the provisions and requirements which the best minds of the country have always insisted should be incorporated in franchises of this kind. It insures to the people absolute control of the street car situation, and safeguards all their rights and interests.

HASTE IN ADOPTION OF ORDINANCE.

Many persons, entirely satisfied with the provisions of the contract, have found fault with the Common Council in passing the ordinance ratifying the contract within so short a time after its execution with the Board of Public Works.

When the Board, early in March, commenced negotiations with the street railway company, it invited the members of the Common Council to meet with it and join in the consideration of the questions involved. Many members availed themselves of this opportunity to familiarize themselves with the questions being considered. At all times there was the freest and fullest discussion between members of the Board and members of the Council on the pending questions. When the first draft of the franchise was completed by the City Attorney, it was published in all the city papers, and every Councilman was familiar with its provisions. Everything connected with the street railway situation had been the subject of constant discussion in every part of the community. The meetings of the Board at which the terms were discussed were public meetings, and the proceedings were published day by day.

After the contract had been drawn and was nearly ready for execution, an injunction suit was commenced by Charles F. Smith and John F. White, which suit was so brought for the purpose of enjoining the execution of this contract or of any contract with the Indianapolis Company.

Judge Leathers, before whom the action was brought, issued a

temporary restraining order, and, on account of the importance of the case, called his associate Superior Court Judges, John L. McMaster and Vinson Carter, to sit with him at the hearing. These three judges, after considering the question for two weeks, rendered a unanimous opinion that there was no legal reason why the contract should not be executed, and dissolved the injunction. The Board then proceeded, the following day, to execute the contract. Mr. Smith and his associates, through the public press and otherwise, expressed their dissatisfaction with the decision of the Superior Judges, and threatened further and continued litigation. The air was full of rumors of other injunction suits, and the prospect was that the city might again be "tied up" indefinitely by these gentlemen, who seemed determined that the law should not be carried out and that the people should have no relief.

Every member of the Council and every citizen of Indianapolis who could read was entirely familiar with every phase of the situation. The question presented was, Shall the Council, by delay, put it in the power of Charles F. Smith and John F. White, or any other man, to override the decision of the Superior Court, the municipal authorities and the people who demanded that the question be settled? It was concluded that no good purpose could be served by delay, but that much harm might thereby be occasioned. So, in accordance with law, a meeting of the Council was called, the ordinance introduced, and, in accordance with the rules of that body, referred to the appropriate committee. On the following afternoon the Council again met in the legal way, the committee reported, and the ordinance placed upon its passage, and was adopted by the affirmative vote of every member of that body, without distinction of party, save one, the vote standing 20 yeas, 1 nay. On the afternoon of the day following the Mayor signed the ordinance, and it became operative.

The contract embodied in this ordinance is before the public, and speaks for itself. It gives to the people of Indianapolis cheaper fares than are enjoyed by the people of any other city in the country, considering the transfers and the number of miles that may be traveled on a single fare. The press of the United States representing all parties and shades of opinion agrees that it is a model franchise, and congratulates the people of Indianapolis upon the favorable terms contained in it. It is the end of strife, contention and litigation. It clears the situation of all complications, and insures to the people of Indianapolis in the years to come first-class, modern and adequate street railway service. The future is confidently appealed to for the vindication of all those responsible for it.

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